

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: March 19, 2002

TO : Elizabeth Kinney, Regional Director  
Harvey A. Roth, Regional Attorney  
Gail Moran, Assistant to the Regional Director  
Region 13

FROM : Barry J. Kearney, Associate General Counsel  
Division of Advice

SUBJECT: Operative Plasterers and Cement Masons Local 5 536-2571  
(R.G. Construction Services, Inc.) 536-  
2573  
Case 13-CB-16811

This case was submitted for advice as to whether a union violated Section 8(b)(1)(A) by accepting dues from an employee pursuant to a checkoff authorization form the employee signed for another union, where the two unions and employers in the past had had agreements and a practice of remitting employees' dues to one union or the other, depending upon in which county the employee performed work. We conclude that, at least when those agreements had terminated, there was no arguable basis for dues to be checked off and accepted by the union for which the employee had not signed a checkoff authorization. Accordingly, that union violated Section 8(b)(1)(A) by accepting the dues.

### **BACKGROUND AND FACTS**

Briefly, the Charging Party individual has been a member of the Bricklayers' Union since 1988, when he also signed a Bricklayers dues checkoff card authorizing employers signatory to a contract "with any Bricklayers & Allied Craftsmen Local Union, District Council, the International Union, or any other BAC affiliate" to deduct dues from employees' paychecks and remit them to "said Union, to the International Union, or to any other BAC affiliate." The Employer here was signatory, via a multiemployer Association, to Section 8(f) agreements with both the Respondent Plasterers' Union and the local Bricklayers Union. For almost 50 years the Respondent Plasterers Union and Bricklayers' Unions in northern Illinois have had geographic jurisdictional agreements, whereby each union had jurisdiction over plastering work on a county-by-county basis. Those agreements were "recognized" under the Association contracts, according to the Plasterers' vice-president. Under those agreements,

the unions agreed that the dues from a member of one of the unions would be remitted by employers to the particular union, either the Respondent Plasterers or the Bricklayers, which had jurisdiction over the county in which the member performed work. Fringe benefit payments were not divided up on a county basis; they were always paid to the employee/member's "home" union. The Plasterers admit in a position statement that the unions treated a dues checkoff authorization for one union as "universal in its operation and fully interchangeable."

In 1998 the Respondent Plasterers attempted to revoke the geographical jurisdictional agreements with the Bricklayers, which the Bricklayers appealed to the AFL-CIO. In July 2000, the Plasterers' revocation was upheld by the AFL-CIO. The Plasterers' vice-president states that the agreements terminated in July 2000.

On February 2, 2001, the Plasterers filed a petition seeking to be the Section 9(a) representative of all of the Employer's plasterers. At that time, out of the core group of 15-20 Employer plasterers, 7 were members of the Bricklayers and the rest members of the Plasterers. An election was conducted on March 15, 2001, won by the Plasterers over the intervenor Bricklayers. Plasterers was certified on June 12, 2001. The Charging Party filed the instant charge on September 10, 2001. Plasterers admits that between March 31 and July 29, 2001, it received over \$500 in dues deducted by the Employer from the Charging Party's paychecks.

#### **ACTION**

We agree with the Region that Plasterers violated Section 8(b)(1)(A) by accepting the dues within the Section 10(b) period deducted from the Charging Party's paychecks, where the Charging Party had never signed a checkoff authorization for the Plasterers, and where any argument that Plasterers was entitled to receive checked-off dues as an "affiliate" of the Bricklayers has been meritless at least since July 2000, when the Plasterers-Bricklayers geographic jurisdictional agreements were terminated.

A union violates Section 8(b)(1)(A) when it accepts dues checked off by an employer from a union member/employee's paycheck without a signed authorization for the deduction and remittance to that union.<sup>1</sup> Here, the

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<sup>1</sup> See, e.g., Rochester Mfg. Co., 323 NLRB 260, 262 (1997), enfd. 194 F.3d 1311 (6th Cir. 1999), cert. denied 529 U.S. 1066 (2000). See also IUOE Local 798 (General Motors),

Charging Party clearly did not sign a checkoff authorization explicitly for Plasterers. Thus, any argument that his checkoff authorization encompassed the deduction and remittance of dues to Plasterers must be based on the "any other BAC affiliate" language in his signed Bricklayers' checkoff authorization. Without passing on the validity of such an "affiliate" argument based on the historic Plasterers-Bricklayers geographic agreements, i.e., that Plasterers was a "BAC affiliate" of Bricklayers under those agreements, that argument cannot withstand the admitted revocation of those agreements in, at the latest, July 2000. Thus, we conclude that by that date at the very latest, Plasterers could no longer conceivably be viewed as an "affiliate" of Bricklayers, and any deduction of dues by the Employer from the Charging Party's paycheck based on his 1988 Bricklayers checkoff authorization and remittance to Plasterers was invalid. Accordingly, a Section 8(b)(1)(A) complaint should issue against Plasterers, absent settlement, for accepting the dues without a valid Plasterers checkoff authorization.

B.J.K.

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Case 9-CB-9977 et al., Advice Memorandum dated August 27, 1999, pp. 9-10 (one local violated 8(b)(1)(A) when it accepted dues deducted pursuant to checkoff authorizations for another local).